IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11223 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JITENDRABHAI SOMABHAI MALI - Petitioner(s)
Versus
COMPETENT AUTHORITY AND ADDL. COLLECTOR & 1 - Respondent(s)

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Appearance :

MR YN OZA for Petitioner(s) : 1, 1.2.1,1.2.2
MR AY KOGJE AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/11/2006

ORAL JUDGMENT

1. Mr.Yatin Oza, learned senior advocate with Ms.Sonal Shah, learned advocate for the petitioners and Mr.A.Y.

Kogje, learned Assistant Government Pleader for the respondents – State.

2. Short facts necessary for the disposal of the present writ application are that Mr.Chimanbhai Lallubhai Mali and Mr.Somabhai Lallubhai Mali submitted Form No.1 as prescribed under sec.6 of the Urban Land (Ceiling and Regulations) Act, 1976, wherein they stated that Mr.Chimanbhai Lallubhai was holding some residential property in Ward No.7, City Survey Nos.1452 and 1329 and was also holding certain agricultural land admeauring 7638 sq.mtrs. of Survey No.75 of village Tunki.

3. Mr.Somabhai Lallubhai also filed a separate form and stated that he holds some residential property in Ward No.12, City Survey No.2148 and yet another residential property in Ward No.7, City Survey No.1323 and also possesses part of the agricultural property situate in village Tunki (Survey No.75). The competent authority made an order against the interest of the petitioners. Therefore, Mr.Jitendrabhai Somabhai Mali filed an appeal under sec.33 of 1976 Act. From the order passed by the authority, it would appear that in pararagraphs No.3 to 8, it recorded the arguments of the appellants

and in paragraphs Nos.9.1 to 9.9, it recorded arguments of the competent authority / Government. In paragraph No.10 it recorded as under;-

> "10. The land of the Appellants was declared surplus under sec.9 and under sec.10(3) and 10(5) notices were served and published in the Government Gazette and after that the possession of the land was taken over, and the case was reviewed by the Government under sec.34. The possession was handed over by the Appellants by his full consent, hence there was no locus standi on the part of the Appellants to file this appeal."

4. I am shocked and surprised to see the understanding of the Additional Chief Secretary and the Urban Land Tribunal in observing that because the possession had been given by the appellants and the order has been confirmed by the Government under sec.34, the appellant had no locus to file the appeal. The dispossession of a person from his property would only deprive him of the possession of the property but would not denude him of his legal right and authority to

challenge the original order in execution of which he has been dispossessed. If dispossession puts a curtain over everything, then the defendant who lost his possession in execution of an illegal order, would not be entitled to prefer an appeal and an illegal order would achieve finality because of some inaction or non-action. Dispossession does not deprive a party of his right to challenge the correctness of the order. If appeal of such person is allowed then the possession would be restored to him. An appeal which is otherwise competent under the law would not become infructuous, simply because the person challenging the order has been dispossessed.

5. Para 10 is the only consideration of the arguments. The Urban Land Tribunal does not even say that the arguments of the appellants were illegal, wrong, bad or contrary to law. It does not even touch the arguments raised by the other-side, it decided the matter on the question of locus only.

6. It has been further observed by the authority that “as the Appellants were given sufficient and eligible deduction and units to the eligible persons, there was no tenable contention in the Appellants' argument, hence there was nothing to interfere with order. The order was

also reviewed under sec.10(3) and the possession was handed over by the land holder, at this final stage there was no point in interfering the appeal, and appeal could not survive, hence it was disallowed." The order passed by the authority shows absolute non-application of mind and non-understanding of law. It would be incorrect to say that because the order was reviewed under sec.34 and the land vested in the Government under sec.10(3) and possession was handed over by the landholder, there was no point in filing the appeal.

7. I have already observed that filing of an appeal would not depend upon subsequent event of dispossession, but would depend upon the right which a person has on the date of the order.

8. The order passed by the Tribunal deserves to and is accordingly quashed. The matter is remitted to the authority for reconsideration of the entire material. It is, however, directed that the Tribunal shall decide the matter in accordance with law. It shall be obliged to consider each and every argument raised by the petitioners including the argument that the land of village Tunki was agricultural land and as such the same could not be treated to be vacant land. The Tribunal shall

be obliged to pass a speaking order in the matter.

9. In case the Tribunal is abolished, then the matter shall be heard by the Secretary (Appeals/Disputes), Revenue Department, Gandhinagar. It is expected of the Tribunal/Secretary that they will give an opportunity of hearing to the petitioners and shall decide the matter in accordance with law and the directions of this Court, preferably with in a period of four months from the date of appearance of the present petitioners. No costs.

(R.S. GARG, J.)

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